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City of Portland

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PENDLETON DIVISION

**OREGON FIREARMS FEDERATION,
INC., et al.,**

Plaintiffs,

v.

TINA KOTEK, et al.,

Defendants,

and

**OREGON ALLIANCE FOR GUN
SAFETY,**

Intervenor-Defendant.

Case No. 2:22-cv-01815-IM (lead case)
3:22-cv-01859-IM (trailing case)
3:22-cv-01862-IM (trailing case)
3:22-cv-01869-IM (trailing case)

**CITY OF PORTLAND'S UNOPPOSED
MOTION TO APPEAR AS *AMICUS*
CURIAE IN SUPPORT OF STATE
DEFENDANTS**

MARK FITZ, et al.,

Plaintiffs,

v.

ELLEN F. ROSENBLUM, et al.,

Defendants.

KATERINA B. EYRE, et al.,

Plaintiffs,

v.

ELLEN F. ROSENBLUM, et al.,

Defendants

and

**OREGON ALLIANCE FOR GUN
SAFETY,**

Intervenor-Defendant.

DANIEL AZZOPARDI, et al.,

Plaintiffs,

v.

ELLEN F. ROSENBLUM, et al.,

Defendants.

LR 7-1 CERTIFICATION

In accordance with LR 7-1, counsel for movant City of Portland conferred with counsel for the parties via email with respect to the City's proposed appearance as *amicus curiae*. Mr. Brian Marshal, on behalf of state defendants, Mr. Zach Pekelis, on behalf of intervenor-defendant *Oregon Alliance for Gun Responsibility*, Mr. Matthew Rowen, on behalf of the *Eyre* plaintiffs, Mr. Leonard Williamson, on behalf of the *Oregon Firearms Federation* plaintiffs, and Mr. James Buchal, on behalf of the *Fitz* and *Azzopardi* plaintiffs, stated that their respective clients do not object to the present motion.

MOTION

The City hereby moves this court for an order permitting the City to appear as *amicus curiae* in support of state defendants' response to the *Oregon Firearms Federation*, *Fitz*, *Eyre*, and *Azzopardi* plaintiffs' motions for preliminary injunction. (Dkt. 83). The City's proposed *amicus* brief is attached to the present motion for this court's consideration.

MEMORANDUM IN SUPPORT OF MOTION

The City is an Oregon municipal corporation with a significant interest in the proper construction of Measure 114. The City, through the Portland Police Bureau and alongside other law-enforcement and community partners, is charged with maintaining public order, enforcing laws, and investigating crimes within its jurisdiction. Although the goal of reducing gun violence is not unique to the City, over the past several years the City has experienced an unprecedented increase in shooting incidents and gun-related homicides. As the largest municipality in Oregon, the City has borne the brunt of the effects of gun violence on its citizens and residents, and significant evidence connects the legality and ready availability of large-capacity magazines to

that increase. Measure 114, which was passed by an overwhelming majority of City voters,¹ directly addresses those serious public-safety and public-health concerns. The City has a compelling interest in the safety of its citizens and residents—and, therefore, a compelling interest in the correct construction and application of Measure 114.

This court has the legal authority to grant the City’s motion to appear as *amicus curiae* in such a case. The Court of Appeals for the Ninth Circuit has long endorsed the participation of *amici curiae* in district-court proceedings where appropriate. *See, e.g., Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982)² (“The district court has broad discretion to appoint amici curiae.”); *Alliance of Nonprofits for Ins., Risk Retention Group v. Kipper*, 712 F.3d 1316, 1327-28 (9th Cir. 2013) (holding that district court did not affect substantial rights when granting motions to appear as amici without first considering responses in opposition). This court regularly exercises that authority to consider *amici*’s perspectives on the issues raised by the parties. *See, e.g., WildEarth Guardians v. Jeffries*, 370 F.Supp.3d 1208, 1228 n.2 (D. Or. 2019) (“The role of amicus’ briefing is to inform the Court and provide perspective on the issues the parties themselves raise”); *Nat’l Wildlife Fed’n v. Nat’l Marine Fisheries Serv.*, No. 3:01-CV-0640-SI, 2017 WL 18229588 at *1, 7 (D. Or. Apr. 3, 2017) (considering input of *amici*).

Amici are most appropriate when they assist in “case[s] of general public interest” and “supplement the efforts of counsel.” *Miller-Whol Co., Inc. v. Comm’r of Labor and Industry State of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982); *see id.* (describing “classic role of amicus

¹ Measure 114 prevailed by a nearly three-to-one ratio in Multnomah County, which includes most of the City. *See* https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/2022-11_report_15.pdf (last visited on 02/07/2023).

² *Abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).

curiae”); *WildEarth Guardians*, 370 F.Supp.3d at 1228 (citing *Miller-Whol*).

The Federal Rules of Civil Procedure do not prescribe a particular procedure for a nonparty’s motion to appear as *amicus*, but this court has previously adopted the Ninth Circuit’s view of *amici*’s role. *WildEarth Guardians*, 370 F.Supp.3d at 1228. The City’s participation as *amicus* is appropriate here, because its proposed brief provides important insight on the serious public-health and public-safety implications of plaintiffs’ legal challenges to Measure 114.

CONCLUSION

For the foregoing reasons, this court should grant the City’s motion to appear as *amicus curiae* in support of state defendants. And this court should accept the City’s attached *amicus curiae* brief in support of state defendants’ response to the *Oregon Firearms Federation*, *Fitz, Eyre*, and *Azzopardi* plaintiffs’ motions for preliminary injunction for filing in these cases.

DATED: May 15, 2023.

Respectfully submitted,

/s/ Victor Mercado Negro

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Of Attorneys for Defendant City of Portland